IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

SA.No. 641 of 1994(B)

AS.85/1993 of DISTRICT COURT, THRISSUR
OS.20/1989 of MUNSIFF COURT,THRISSUR
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APPELLANT:RESPONDENT:PLAINTIFF:

DHANASAKTHI CHITTIES AND LOANS (P) LTD.,
KANJANY, THRISSUR.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS: APPELLANTS:DEFENDANTS:
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1. **RAVI,**
   S/O. MENOTHUPARAMBIL KUNJUNNY,
   ANTHIKAD VILLAGE, THRISSUR TALUK.

2. **BHASKARAN,**
   S/O.THURUTHIYIL KUTTAPPU,
   MANALUR VILLAGE, THRISSUR TALUK.

3. **LAILA,**
   W/O.THURUTHIYIL BHASKARAN,
   MANALUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.K.DIVAKARAN NAIR for R1 to R3

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.SASIDHARAN NAMBIAR, J.

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S.A.No. 641 OF 1994

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DATED THIS THE 22nd DAY OF OCTOBER, 2007

JUDGMENT

Plaintiff in O.S.20 of 1989 before Munsiff Court, Thrissur is the appellant. Respondents are defendants. Appellant is a Private Company conducting chitty. The allegation in the plaint was that as foreman, appellant was conducting a monthly chit from its Mangalore Branch and first respondent subscribed to A class chitty valued at Rs.100/- per ticket. On 10.6.1982 first respondent prized the chitty. First respondent with respondents 2 to 4 executed Ext.A1 security bond whereunder first respondent promised to make payment of the balance of 105 monthly intalments, commencing from 10.8.1982 till the termination of the chitty. It was contended that first respondent defaulted to pay 48th instalment onwards and Rs.7100/- being the defaulted instalments with interest at 12% from the respective holders is due. Suit was instituted for realisation of the amount.

2. Respondents filed a joint written statement admitting that first respondent has subscribed the chitty. Suit was resisted only on the ground that it is barred by time. What was contended was that suit was not filed within three years from

10.6.1985 and so the suit is barred by time.

3. Learned Munsiff, on the evidence of PW1, DW1 and Exts.A1 to A6 and B1, rejected the defence that suit is barred by time. Learned Munsiff found that as per Ext.A1, kuri was terminated on 10.1.1991 and 48th instalment was due on 10.1.1986 and therefore appellant need institute the suit only within three years from that date and the suit was instituted on 2.1.1989 is within time. Decree was granted. Respondents challenged the decree and judgment before District Court, Thrissur in A.S.85 of 1993. Learned District Judge, on reappreciation of evidence, allowed the appeal and dismissed the suit on the ground that though it was contended by appellant that chitty was conducted at Mangalore Branch of appellant company, it was in fact conducted at Kanjani of Thrissur District and as chitty was not registered, the chitty is illegal and therefore on the strength of an illegal kuri, appellant is not entitled to the decree. It is challenging the said judgment, appeal was filed.

4. The second appeal was admitted formulating the following substantial questions of law.

1) When the allegation in the plaint that chitty was conducted at

Mangalore Branch of appellant company was not denied by respondents in the written statement and no issue was framed on the said question, whether the fact is not admitted as provided under Rule 5 of Order VIII of Code of Civil Procedure and if so whether first appellate court was justified in holding that suit is not maintainable.

2)Whether first appellate court was justified in holding that Ext.A1 is unenforcible, as it is against public policy when respondents have not pleaded such a case.

5. Learned counsel appearing for appellant was heard. There was no representation for respondents, though they originally appeared through a counsel.

6. The only defence taken by respondents in their written statement was that suit is barred by limitation. As rightly pointed out by learned counsel appearing for appellant, it was specifically pleaded in the plaint that first respondent joined in a chitty conducted by appellant company at its Mangalore office. This fact was not denied in the written statement at all. Therefore, as provided under Rule 5 of Order VIII of Code of Civil Procedure, the said plea of appellant is to be taken as admitted. If that be the case, it is not possible to hold that the

chitty was not conducted at Mangalore Branch of the company, when there is absolutely no contra evidence on that fact. Even when PW1 was examined, there was no case for respondents that the chitty was not conducted at Mangalore Branch or was conducted as Kanjani as found by first appellate court. Even when DW1 was examined, he had not raised such a contention. Hence first appellate court was not justified in holding that the chitty was conducted at Kanjani within Thrissur District and therefore the chitty being unregistered is illegal.

7. The registration of chitty is warranted as provided under Section 3 of the Chitties Act, 1975. There is no case for appellant that the disputed chitty was a registered one. But that question may arise only if chitty was conducted within the State of Kerala. When it is the specific case of appellant that it was conducted at Mangalore within Karnataka State and that fact was not even disputed, first appellate court was not justified in holding that chitty was illegal as it was conducted within Kerala State and therefore the amount due under such a chitty cannot be realised.

8. Learned counsel appearing for appellant also relied on the decision of a learned Single Judge of this court in **Nadarajan**

V. Nadarajan (1999(2)KLT 512) wherein the question whether the transaction of a chitty conducted without registration is void or not was decided. Learned Single Judge held that the enactment of Kerala Chitties Act in the place of Cochin Kurries Act and Travancore Chitties Act was to make a uniform law relating to chitties to the whole of Kerala by repealing Travancore Chitties Act and Cochin Kurries Act and as is clear from Section 3(1) it was enacted for the purpose of protection of the revenue and not for the protection of public interest and therefore contention that kuri involved is void, being conducted without obtaining sanction of the Government or the competent authority and without registering the same as provided under Section 3(1) of Kerala Chitties Act are in contravention of provisions of the Act is not correct. In the light of the said decision, it was argued that even if the chitty was unregisteed, the transaction is not void and when it was admitted that first respondent received the amount after bidding the chitty and executed Ext.A1 chitty udampadi and did not pay the amount demanded in the plaint and the claim is not barred by limitation, the decree as granted by trial court should not have been interfered. There is substance in the argument, in the light of

the decision of the learned Single Judge. But as the question whether the chitty was conducted at Kanjani or at Mangalore was not an issue, the said aspect on the facts is not involved in this appeal. In such circumstances, first appellate court should not have interfered with the decree granted by the trial court.

Appeal is allowed. The decree and judgment passed by District Court in A.S.85 of 1993 are set aside and the decree and judgment of Munsiff Court in O.S.20 of 1989 are restored. No costs.

M.SASIDHARAN NAMBIAR, JUDGE

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